

the Solicitors Act of 1843 and in section 11 of the Act for continuation of certain expiring laws passed in 1749 (12 Geo. II c. 46)—is as follows:—

"51—(1) No solicitor shall wilfully and knowingly act as agent in any action, or in any matter in bankruptcy for any unqualified person, or permit his name to be made use of in any such action, or matter upon the account, or for the profit, of any unqualified person, or send any process to any unqualified person, or do any other act enabling any unqualified person to appear, act or practise in any respect as a solicitor in any such action or matter.

"(2). Where it appears to the disciplinary committee or, as the case may be, to the High Court, that a solicitor has acted in contravention of this section, his name shall be struck off the Roll."

We leave subsection (1) for a moment.

A difficulty arises in regard to subsection (2). Is it incorporated into our law by section 91 (2) of Ordinance No. 101 (Courts) or not? If it is, we have a finding by the disciplinary committee and this Court has, therefore, no option but to strike the Respondent off the Roll. What then does clause (1) say? It says that the Respondent may be struck off if he does any act which would render him liable to be disbarred or suspended or struck off if he were a barrister or solicitor in England. In our opinion the subsection in question confers a compulsory jurisdiction in certain cases. But the condition underlying the jurisdiction is that Respondent shall have done a certain act; and, as we read the subsection, it is for the Court to find that the act was done. The words of the subsection do not say that Court shall accept as conclusive the finding of the disciplinary committee that the act was done. The subsection, therefore, in our opinion, is not incorporated into our law by clause (i) and we are, therefore, thrown back on the provisions of subsection (1) of section 51 of the Act of 1932.

We regret that we were offered no argument upon this point.

We go back now to subsection (1) of section 51 of the Act of 1932. The subsection concerns only acts done "in any action or in any matter of bankruptcy". No question arises in regard to bankruptcy and there is no evidence that anything which the clerk did was done in an action. The word "action" is not defined in the Act of 1932 nor in any of the preceding acts. In the general law it is a generic term. It means "litigation in a civil Court for the recovery of individual right, or redress of individual wrong". (*Stroud sub. verb.* and the authorities there cited). But what evidence there is of the clerk taking instructions relates only to non-contentious business. Here again had the examination of the witness been directed to what was done in an action an offence might possibly have been brought home against the Respondent. As it is we are of opinion that there is no evidence to support the finding of the Bar Committee on this head.

We come therefore to the conclusion, first, that in regard to the only two findings of the Bar Committee which were proceeded with before us there are no legal grounds upon which we can make the order asked for; and, secondly, that the only offence which the Respondent seems to have committed is the partnership offence against section 90 (5) (b) of Ordinance No. 101 (Courts).

With regard to the partnership offence it is to be observed that the Respondent has never been charged with it. It is, in fact, not a subject for enquiry by a Bar Committee at all. It seems to be a sort of statutory criminal offence. By subsection (7) of section 90 such offence must be tried by the District Court. No doubt this Court, the Supreme Court, has jurisdiction to try it, but as there has been no direct issue between the Respondent and any prosecutor in regard to such a charge, and it is a charge which is not within the scope either of this Motion or of the Bar Enquiry which preceded it we must decline to say anything about it. So far as we are concerned the matter is still at large.

We wish to say that we have had the greatest difficulty with this case. This is due partly to the fact that the examination of the witnesses at the Bar Enquiry was based largely upon a lack of appreciation of the acts for which a solicitor and advocate can be struck off the Rolls, partly to the fact that none of the findings of the Bar Committee is connected with any specific clause of section 91 (b); and partly to the very casual presentation of the case before us.

The motion is dismissed, but without costs.

Motion dismissed.

(Original Civil Jurisdiction)

Whitley, J.

December 15, 1932.

**IN THE MATTER OF THE PETITION OF RIGHT
OF TAN ENG HOE (PETITIONER) .. Plaintiff.**

vs.

**THE ATTORNEY-GENERAL OF THE
STRAITS SETTLEMENTS..... Defendant.**

(Malacca Crown Suit No: 4 of 1932)

Damages—wrongful arrest—justification—reasonable suspicion—exemption from liability.

Where A., whose habits and movements answered to the description given of those of B. against whom a report of cheating had been made, was arrested as the result of investigation and enquiries by the Police and it was subsequently discovered that he was not the real offender. In an action by A. for damages for wrongful arrest:—

Held, that the circumstances were such that any reasonable man would have fairly suspected A. of being the person who had committed the offence complained of and that the Police were justified in effecting the arrest.

Hoye v. Bush, 133 Eng. Rep. 545 applied.

ACTION tried before Whitley, J.

The material facts are set out in the Judgment below:

Goh Tiow Wan for the Plaintiff.

J. H. Pedlow, Acting Solicitor-General, for the Defendant.

Cur. Adv. Vult.

Whitley, J.—The facts (most of which were admitted) in this case are shortly as follows:—

On 28th September 1931 a report of cheating by means of a forged cheque was made at Singapore against a Chinese who gave his name as S. E. Tan of 120 Heeren Street Malacca.

Further reports of cheating against the same person were made by other complainants. It was ascertained that a man describing himself as Seah Eng Tan, a Straits born Hokkien, of Malacca had engaged a room at the Hai Hin Hotel on 26th September; had filled in the Registration form as Seah Eng Tan a merchant of Malacca and had attempted unsuccessfully to cash a cheque for \$200 with the proprietor of the Hotel. The proprietor further stated that this man was about 36 years of age and carried a small black bag.

In the course of their investigations the police obtained information from what they regarded as a reliable source that a Straits born Chinese from Malacca of similar age and appearance, named Tan Eng Hoe had been in Singapore about the same time, carried a small black bag and had told an acquaintance that he was staying at the Hai Hin Hotel. It was stated that he had been dismissed from the service of Messrs. Sime Darby with 1 month's notice.

The Singapore Police thereupon forwarded the Investigation papers with the Diary and copies of reports to the Detective Branch Malacca. It was ascertained that a Straits born named Tan Eng Hoe answering to this description was living in Jonker Street. He was asked to come to the Detective Station where Inspector Lissamer being informed that he was an Insurance Agent engaged him in conversation on insurance matters. In the course of this conversation he told the Inspector that he had been given one month's notice by Sime Darby & Co., Malacca because his account books were wrong, that he worked for Hooglandt & Co., Singapore from March 1931 until June or July 1931 when he received one month's notice and that after his discharge from that firm he stayed for a few days at the Hai Tin Hotel, Beach Road, Singapore. The Hai Tin Hotel is admittedly the same as Hai Hin Hotel.

Inspector Lissamer telephoned this information to the Detective Branch Singapore and Inspector McIntosh replied that there were other cases of cheating against the same man. The man Tan Eng Hoe who is the Petitioner was then arrested outside the station and

allowed to telephone for his father who bailed him out. He appeared before the Magistrate next day and was remanded on bail and two days later when the complainants from Singapore failed to identify him he was discharged.

He thereupon instituted these proceedings for damages for wrongful arrest. The Defendant admitted the imprisonment so that the onus was on him to prove justification and he contended that there was reasonable and probable cause for the arrest. He established that the man Seah Eng Tan cheated or attempted to cheat five different sets of persons in Singapore thereby committing offences punishable under section 420 of the Penal Code. In the course of these offences he also used as genuine a forged cheque an offence punishable under sections 467 and 471 of the Penal Code. Offences under these two latter sections are non-seizable and accordingly a warrant had to be and was obtained. Offences under section 420 are seizable so that in respect of those offences no warrant was necessary and the police could arrest without a warrant under section 30 (1) (a) of the Criminal Procedure Code which reads as follows:—

Any police officer may arrest without a warrant any person against whom a reasonable suspicion exists of his having been concerned in any seizable offence.

The real Seah Eng Tan was subsequently arrested in Singapore under another name and convicted on 5 charges under section 420 and 2 under sections 467 and 471, so that the petitioner was clearly an innocent man but the police contend that they had reasonable and probable cause for suspecting and believing that he was the man wanted for these offences. The law is clearly laid down in the case of *Hoye v. Bush*, 133 English Reports 545. In that case Richard Hoye was arrested under a warrant for the arrest of John Hoye. It was held that the defendant was not within the protection of the warrant. In the course of his judgment at page 549 Tindall, C.J., observed "it would be dangerous if a person whose office is wholly ministerial were allowed to sit in judgment and say who is the unnamed person intended by the warrant which he is required to execute." He was referring to an earlier case in which the warrant directed the constable to arrest "—Hood by whatsoever name he be called being one of the sons of Samuel Hood." And clearly his remarks apply with even greater force to a case such as the present in which a specific name is given. He goes on to say "Where indeed it can be shown that a felony has actually been committed the constable may throw the warrant aside. It will be sufficient in such a case for the constable to show that he has taken the person really charged with the offence however he may have been misdescribed in the warrant."

That being so and Tan Eng Hoe having been arrested when the name on the warrant was Seah Eng Tan it follows that the case must be considered as

though there were no warrant in existence and as if the police arrested under the powers given to them by section 30 (1) (a) of the Criminal Procedure Code.

The principles by which the Court should be guided in deciding what is reasonable cause of suspicion to justify arrest are to be gathered from a number of cases. A belief honestly entertained is not of itself enough. "The defendant must show facts which would create a reasonable suspicion in the mind of a reasonable man" [Per Lord Campbell, C.J. in *Bronghton v. Jackson* (1852) 18 Q.B. 378].

As Tindall, C.J. put it to the Jury very clearly in *Allen v. Wright*, 173 English Reports 302: 8 Carr. & P. 525.

"The only two points upon which you must be satisfied before you can find a verdict for the defendant are 1st that a felony had actually been committed; that some person or other had stolen the feathers and 2nd that the circumstances were such that you yourself or any reasonable person acting without passion or prejudice would have fairly suspected the plaintiff of being the person who did it. If you think the circumstances were such you will find your verdict for the defendant".

A man is not bound to wait until he is in possession of such evidence as would be admissible and sufficient for prosecuting the offence to conviction or even of the best evidence which he might obtain by further inquiry. To quote Bramwell, B. in *Perryman v. Lister*, (1868) L.R. Ex: at p. 202 "It does not follow that because it would be very reasonable to make further inquiry it is not reasonable to act without doing so." Furthermore as stated in Pollock on Torts 12th Edition p. 224, it is obvious that the existence or non-existence of reasonable cause must be judged not by the event but by the party's means of knowledge at the time.

Applying these principles to the present case it seems to me that the grounds upon which the police arrested the petitioner were grounds upon which a reasonable man would have acted.

A number of seizeable offences which would in England be felonies had undoubtedly been committed in Singapore in September 1931 by a man calling himself Seah Eng Tan of Malacca who occupied a room at the Hai Hin Hotel Beach Road Singapore. This man was a Straits born Chinese about 36 years of age wearing the usual European type of clothing and he used to carry a small black bag.

The police investigations were abortive until 21st February 1932 when information was received from a person whose information given in previous cases had proved to be reliable. This man was not a paid informer but travels about the country and was stated by Inspector MacIntosh to be in a position to obtain information. I have already set out the substance of the

information which he gave and what the petitioner himself related when questioned before his arrest.

The facts and information which created suspicion in the minds of the police that Tan Eng Hoe was the same person as the Seah Eng Tan who was wanted may be summarized as follows:

1. No Seah Eng Tan could be found.
2. Assuming, as was probably the case, that Seah Eng Tan was an assumed name Eng and Tan are also part of the name Tan Eng Hoe and it is a well known fact that criminals using false names often use part of their real names.
3. Tan Eng Hoe like Seah Eng Tan came from Malacca.
4. Tan Eng Hoe according to his statement before arrest to Inspector Lissamer had stayed at the at the Hai Hin Hotel about the same time (September 1931) that Seah Eng Tan stayed there.
5. Tan Eng Hoe and Seah Eng Tan wore similar clothing and each carried a small black bag.
6. Tan Eng Hoe was unemployed and had been discharged by Sime Darby & Co., Malacca because his account books were wrong.

In my opinion those are facts which would create a reasonable suspicion in the mind of a reasonable man. The police clearly acted *bona fide* without passion or prejudice and in my view following the words of Tindall C.J. quoted above "the circumstances were such that any reasonable person acting without passion or prejudice would have fairly suspected the petitioner of being the person who did it." The Defendant is accordingly entitled to judgment.

I would add that the petitioner has my deep sympathy as being a perfectly innocent man who has been the victim of a series of coincidences such as left the police in my view no option but to act as they did.

I am happy to think that they acted with the utmost care and consideration submitting the Petitioner to as little indignity as possible.

The petition will be dismissed.

No order as to costs.

Judgment accordingly.

Solicitor for the Plaintiff—Gob Tiow Wan.